



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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OFFICE OF THE NATIONAL
OMBUDSMAN

September 8, 2008

The Honorable Marcus A. Peacock
Deputy Administrator
Office of the Administrator
U.S. Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Deputy Administrator Peacock:

I am contacting you regarding a case filed with this office by Mr. Brian L. Warner, Environmental Services Supervisor, representing members of the National Compliance Advisory Panel for the State Small Business Environmental Assistance Programs.

In his correspondence, Mr. Warner states that while serving on the Michigan Compliance Advisory Panel and National Compliance Advisory Panel, he has "observed some critical issues that need to be addressed by USEPA to insure small businesses get the assistance they are supposed to receive and are treated fairly as regulations have a disproportionate impact upon them."

According to Mr. Warner, "...although a mandate, USEPA has failed to hold states accountable for the provision of the compliance assistance programs unlike their oversight of other federally mandated programs." Mr. Warner states that "This lack of accountability and oversight has made the State Small Business Environmental Assistance Programs vulnerable to budget cuts and elimination in a system driven by enforcement and standard command and control policies."

Additionally, Mr. Warner states that "Failure to provide education and assistance is a missed opportunity to prevent violations from ever occurring thus protecting the environment and reducing emissions."

I recently met with Mr. Warner, and other state representatives in Chicago regarding these concerns. Recognizing the great value that compliance assistance provides small businesses to comply with EPA regulations, this program has received praise from both the public and private sectors. However, concerns have been expressed regarding the need for additional support from EPA to promote cooperation with the state compliance program. As the SBA's Office of the National Ombudsman recently recognized the EPA for its efforts to assist small businesses to comply with federal environment regulations, I am sure that you share my concern regarding these comments.

The Mission of the Office of the National Ombudsman:
FOSTERING A MORE BUSINESS FRIENDLY REGULATORY ENFORCEMENT ENVIRONMENT.

409 3rd Street, SW, MC 2120, Washington, DC 20416-0005 Toll Free: (888) 734-3247 Fax: (202) 481-5719 Website:
<http://www.sba.gov/ombudsman> E-mail: ombudsman@sba.gov

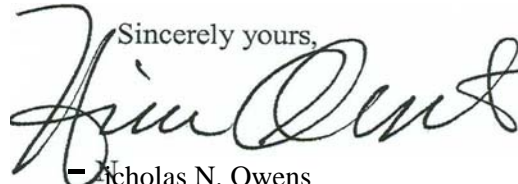
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Pursuant to the Small Business Regulatory Enforcement Fairness Act, which requires the Office of the National Ombudsman to receive, substantiate, and report to Congress comments from small businesses regarding concerns of unfair or excessive Federal regulatory actions, and considering the importance of providing compliance assistance to small businesses, I would appreciate your review and consideration of the National Compliance Advisory Panel for the State Small Business Environmental Assistance Programs' comments. I have also referred this matter to the Small Business Administration's (SBA) Office of Advocacy for a high-level review.

In addition, I am interested in facilitating a meeting with appropriate parties involved (federal and state) with this initiative so dialogue may be furthered. Please advise me if you would like for us to facilitate such a meeting in cooperation with high-level EPA officials.

If you have any questions or need additional information, please contact me at 202-205-7360 or nicholas.owens@sba.gov. Thank you for your consideration.

With best wishes and warmest regards, I am

Sincerely yours,


— Nicholas N. Owens
National Ombudsman and Assistant Administrator for
Regulatory Enforcement Fairness

cc: Mr. Ray E. Spears, Deputy Chief of Staff
Mr. Grant Nakayama, Assistant Administrator for Enforcement and Compliance Assurance
Ms. Walker B. Smith, Director of Civil Enforcement
Ms. Lisa Lund, Acting Director of Compliance
Ms. Jeannette Brown, Director of OSDBU

Enclosure
NNO/ez

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Federal Agency Comment Form Small Business
Administration - Office of the National Ombudsman
409 Third Street SW, Washington, DC 20024
P: (202) 205-2417 - F: (202) 481-5719

OMS Control #3245-0313 Exp.
date 6/30/2010

Case #: 0808280001

Instructions

1. Complete, sign and date this form. (Signature not required if completed at www.sba.gov/ombudsman).
2. Provide a brief written statement on the reverse side regarding the specific enforcement or compliance action taken against your organization by the federal agency.
3. Submit copies of substantiating documentation, such as correspondence, citation, or notice (Note: Can be submitted separately from this form by fax or mail. Make sure to reference your name or company's name with this information).
4. If your comments concern the IRS, you must also submit a completed IRS Tax Information Authorization Form 8821, available at <http://www.irs.gov/foi> (Can be sent by fax or mail).
5. Fax, e-mail or send this form and requested information to: (1) Fax: (202) 481-5719; (2) E-mail: Ombudsman@Sba.gov; (3) Address: SBA, Office of the National Ombudsman, 409 Third Street, SW, Washington, DC 20024

Please Print

Organization of Company Name: National Compliance Advisory Panel SBEAP's

Address: P.O. Box 229, 10125 W. Watergate Rd

City: CADILLAC

State: MI

Zip: 49601

Phone: 231-775-5700

Fax: 231-775-2077

E-mail: bwarner@wpsci.com

Contact Name: Brian L Warner

Title: Environmental Services Supervisor

Please indicate your organization on type:

☒ D

Small Business

☐ D

Not-for-Profit,

Representing

☐ Members

☐ D

Small Government (population of less than 50,000)

List the federal agency with which you are having a problem:

Federal Agency Name: US Environmental Protection Agency

Agency Contact person: Administrator Johnson

Agency Office/Division: Administrator's Office

.y Did the federal agency listed above inform you of your right to contact the SBA Office of the National Ombudsman?

D Yes

☒ D

No

If not, how did you learn about this office?

Confidentiality / Disclosure

The Small Business Regulatory Enforcement Fairness Act (SBREFA), allows you to keep your identity and other information private, and limit its access only to the Office of the Ombudsman (See 15 U.S.C. 657 (b) (2) (8)). However, by requesting confidentiality the federal agency may not have sufficient information to investigate your specific problem, possibly delaying or preventing any potential resolution of your situation.

I request that my information be kept confidential. D Yes ☒ D No (If yes, results may be limited.)

Signature: Brian L. Warner

Date: 08/28/2008

Your signature authorizes the SBA Ombudsman to proceed on your behalf.

Pursue all legal options you believe are in your company's best interest
This process is not a substitute for legal action.

SBA FORM 1993 (3-07) Previous Editions Obsolete

Please Note: The estimated burden for completing this form is 45 minutes. You will not be required to respond to this information collection if a valid OMB approval number is not displayed. If you have any questions or comments concerning this estimate or other aspects of this Information collection, please contact the U. S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20024 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project (3245-0313), Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

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I am currently an appointed member of Michigan's compliance advisory panel and serve as the Region V Representative on the National Compliance Advisory Panel for the State Small Business Environmental Assistance Programs.

Compliance Advisory Panels are one of the three federally mandated components of the Small Business Environmental Assistance Programs under section 507 of the Clean Air Act Amendments of 1990, created to provide compliance assistance to small businesses. The other two components include a technical assistance program and ombudsman.

Each state had to develop a State Implementation Plan to establish their Small Business Environmental Assistance Programs. In my service on the Michigan compliance advisory panel and National Compliance Advisory Panel, I have observed some critical issues that need to be addressed by USEPA to insure small businesses get the assistance they are supposed to receive and are treated fairly as regulations have a disproportionate impact upon them.

First, although a mandate, USEPA has failed to hold states accountable for the provision of the compliance assistance programs unlike their oversight of other federally mandated programs. Assistance mandates should be on equal footing with mandates for regulation and enforcement. Failure to provide education and assistance is a missed opportunity to prevent violations from ever occurring thus protecting the environment and reducing emissions.

Because of this lack of oversight, some states have never implemented a program, some are operating with only one or two of the three components required and some states have reduced or eliminated their programs since their implementation in the early 1990's. USEPA has failed to provide mechanisms to require states to report on the Small Business Environmental Assistance Program activities on a regional or national level and has not filed reports to Congress as requested by the Clean Air Act regarding their status. This lack of accountability and oversight has made the state Small Business Environmental Assistance Programs vulnerable to budget cuts and elimination in a system driven by enforcement and standard command and control policies.

Second, funding for these programs is to come from Clean Air Act Permitting fees but each state is free to determine the level of funding and staffing the program receives and no federal dollars are provided to support these assistance programs. The programs have been able to achieve great results with extremely limited budgets and staff but could achieve so much more if funded and staffed adequately.

Third, these programs are established to assist companies with air compliance needs only. Small businesses need assistance with all their compliance obligations and do not compartmentalize their regulatory burdens into the bureaucratic structures of government of air, water and waste. These programs need to be expanded with appropriate funding and staffing to assist small business with all their environmental requirements. The Environmental Council of States sent a letter to the Administrator of

USEPA in June 2007 in support of the expansion of these programs and requesting a dialogue be started about ways to expand these programs. The USEPA has yet to schedule a meeting with program areas to begin this dialogue.

Last, the newly promulgated Area Source National Emissions Standards for Hazardous Air Pollutants (NESHAPS) will bring tens of thousands more small businesses into the regulatory process than ever before. These small businesses will be in need of assistance in understanding and meeting their regulatory obligations and it is critical that the Small Business Environmental Assistance Programs are given the resources they need to meet this challenge. In addition, USEPA should look for innovative approaches to deal with these companies as command-and-control measures will not be effective with such a large group of sources with limited resources. Innovative programs, like the Environmental Results Programs first created by the state of Massachusetts, should be explored as alternative implementation activities.

Any assistance the SBA National Ombudsman's Office can offer in raising these issues to the upper levels within USEPA would be greatly appreciated.

Respectfully,

Brian Warner

Environmental Services Supervisor
Wolverine Power Cooperative

Region V National Compliance Advisory Panel Member'

Michigan Compliance Advisory Panel Member